

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DONALD WRIGHT,	§
	§ No. 507, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0803024468
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 17, 2010

Decided: January 14, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 14th day of January 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Donald Wright, filed an appeal from the Superior Court's July 22, 2010 order denying his first motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in December 2008, a Superior Court jury found Wright guilty of 8 counts of Rape in the First Degree and 1 count each of Rape in the Second Degree, Unlawful Sexual Contact in the First

Degree and Continuous Sexual Abuse of a Child.¹ He was sentenced to a total of 151 years of Level V incarceration, to be suspended after 140 years for decreasing levels of supervision. Wright's convictions were affirmed by this Court on direct appeal.²

(3) In this appeal from the Superior Court's denial of his first motion for postconviction relief, Wright claims that a) his trial counsel provided ineffective assistance by failing to object to the vagueness of the indictment; and b) his appellate counsel provided ineffective assistance by failing to challenge the vagueness of the indictment on direct appeal.³ Each of Wright's claims is based upon the premise that his indictment did not provide a concise description of the means by which he allegedly had sexual intercourse with the victim.

(4) This Court has ruled that the purpose of an indictment is two-fold: a) to place the defendant on notice of what he must defend against; and b) to provide a shield against subsequent prosecution for the same offense.⁴ Superior Court Criminal Rule 7(c)(1), which contains the parameters for what an indictment must contain, states that an indictment

¹ Del. Code Ann. tit. 11, §§ 773, 772, 769, and 776. See also Del. Code Ann. tit. 11, §761 (containing definitions applicable to sexual offenses).

² *Wright v. State*, 980 A.2d 1020 (Del. 2009).

³ The Superior Court requested Wright's counsel's affidavits pursuant to Rule 61(g)(2), since this was the defendant's first postconviction motion and he had asserted claims of ineffective assistance.

⁴ *Malloy v. State*, 462 A.2d 1088, 1092 (Del. 1983).

should be a “plain, concise and definite written statement of the essential facts constituting the offense charged” and should “state for each count the official or customary citation of the statute . . . or other provision of law which the defendant is alleged therein to have violated.”

(5) In order to prevail on a claim of ineffective assistance of counsel, the defendant must demonstrate that his counsel’s representation fell below an objective standard of reasonableness and that, but for his counsel’s unprofessional errors, there is a reasonable probability that the outcome of the proceedings would have been different.⁵ Although not insurmountable, the Strickland standard is highly demanding and leads to a strong presumption that the representation was professionally reasonable.⁶ The defendant must make concrete allegations of ineffective assistance, and substantiate them, or risk summary dismissal.⁷

(6) We have reviewed this matter carefully and find that there is no factual or legal support for Wright’s claims of ineffective assistance on the part of his trial and appellate counsel. The record reflects that Wright’s indictment conformed to the requirements of Superior Court Criminal Rule 7(c)(1) by placing him on notice of the charges against which he was

⁵ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

⁶ *Flamer v. State*, 585 A.2d 736, 753 (Del. 1990).

⁷ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

required to defend. As such, there was no substantive basis upon which to challenge the indictments. Even assuming error on the part of Wright's counsel, there was no prejudice to Wright as a result of counsel's decisions not to challenge the indictment. Therefore, we conclude that the judgment of the Superior Court must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice